

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

50915

FILE: B-184655

DATE: September 8, 1975

MATTER OF: Fairchild Industries, Inc.

97551

DIGEST:

Since offeror did not protest allegedly inequitable and deficient price evaluation formula contained in the RFP, as amended, prior to closing date for receipt of initial proposals, protest is untimely and not for consideration notwithstanding allegation that protest addresses issues significant to procurement practices or procedures. Protester had prior knowledge of use of similar type of evaluation formula from past procurements, and it is suggested that, in view of continuing nature of supplies and services solicited, protester should take appropriate steps in future to protest timely.

This is a protest by Fairchild Industries, Inc. (Fairchild), against the award of any contract under request for proposals (RFP) No. F42600-75-R-6990, issued by the Department of the Air Force, Directorate of Procurement & Production, Hill Air Force Base, Utah, for the furnishing of services and supplies in the accomplishment of programmed depot maintenance of F-4 type aircraft. Fairchild contends that the price evaluation formula as contained in the RFP, as amended, is inequitable and deficient and does not meet the requirements of the applicable provisions of the Armed Services Procurement Regulation.

The record indicates that the RFP was issued on May 5, 1975. The closing date for the receipt of initial proposals, as provided in amendment No. 1 dated May 8, 1975, was scheduled for July 3, 1975. On August 1, 1975, a letter dated July 29, 1975, from Fairchild, was received in our Office protesting the price evaluation formula. Fairchild forwarded a detailed submission dated August 6, 1975, which was received on August 8, 1975, and reads, in pertinent part, as follows:

"In mid-1974, a formal protest involving these same issues was filed by Fairchild with the Comptroller General under B-181456 dated 11 June 1974. The issues concerned Solicitation N63105-74-R-9003 issued by Naval Air Systems Command.

The Fairchild protest was joined by protests from other firms under B-181326 (Gary Aircraft) and B-181456 (Hayes International Aircraft). No ruling was made on those cases because the protest became moot with the subsequent cancellation of the solicitation.

"At approximately the same time as the formal protest mentioned above, the issues in question were discussed by Fairchild with the Air Force Logistics Command, Dayton, Ohio and Warner Robins Air Logistics Center, Warner Robins, Georgia. These informal presentations concerned an Air Force solicitation for similar services which contained substantially the same evaluation formula as that included in Solicitation Number F42600-75-R-6990. The Air Force recognized the need for refinement of the formula and proceeded to develop a new formula. The developed formula was never implemented because the solicitation on which the issues were based was cancelled."

Section 20.2(b)(1) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) states in pertinent part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. * * *"

Prior to the issuance of the RFP, Fairchild was familiar with the type of price evaluation formula in question here and should have been prepared to file a timely protest. Also, Fairchild submitted an offer under the RFP. In these circumstances, since Fairchild did not protest the allegedly inequitable and deficient price evaluation formula which was contained in the RFP, as amended, prior to the closing date for receipt of initial proposals, the protest is untimely.

Fairchild states that the protest "* * * addresses issues significant to the practices and procedures used by the Government in the award of contracts involving aircraft maintenance and modification services where a major and significant portion of the work is unknown at the time of bidding." This language is similar to that

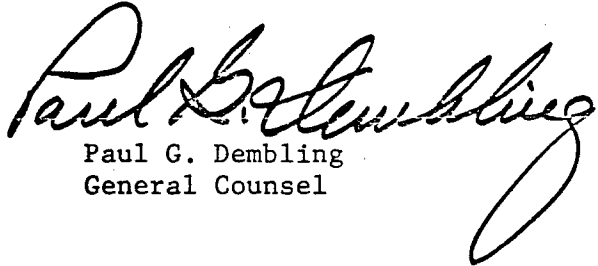
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contained in section 20.2(c) of our Bid Protest Procedures which provides that where our Office determines that an untimely protest raises "issues significant to procurement practices or procedures," it may be considered.

"Issues significant to procurement practices or procedures" refers to the presence of a principle of widespread interest. 52 Comp. Gen. 20, 23 (1972). After a review of Fairchild's submission, we do not find that the use of the price evaluation formula in this particular procurement raises any issues significant to procurement practices or procedures. See Simmons Construction Company, B-182196, October 16, 1974, 74-2 CPD 210.

Since the supplies and services solicited here appear to be of a continuing nature, we suggest that Fairchild take appropriate steps in the future to protest in a timely fashion.

For the foregoing reasons, the protest will not be considered on the merits.


Paul G. Dembling
General Counsel